

DEC 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

PIERRE VILERITO JOSE,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-76803

Agency No. A77-173-516

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Pierre Vilerito Jose, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order upholding an

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's decision denying his application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We review de novo claims of constitutional violations in immigration proceedings. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

Substantial evidence supports the agency's determination that Jose did not meet the continuous physical presence requirement where Jose conceded he had departed the United States for 199 days. *See* 8 U.S.C. § 1229b(d)(2); *see also Mendiola-Sanchez v. Ashcroft*, 381 F.3d 937, 939 (9th Cir. 2004) (stating that the 90/180 day rule replaced the previous "brief, casual, and innocent" standard for determining when a departure breaks continuous physical presence).

Jose's contention that the streamlined BIA decision violates his due process rights is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.